

REMARKS

Reconsideration of the above-identified application in view of the foregoing amendments and following remarks is respectfully requested.

A. **Claim Status / Explanation of Amendments**

Claims 1-7 and 9 are pending and were rejected. More specifically, the rejection of claims 1, 4-5, 7, and 9 pursuant to 35 U.S.C. § 102(b) as allegedly being anticipated by Japanese Patent No. JP 2000-069356 A to Noriyuki (“Noriyuki”) was maintained. [10/14/08 Office Action, p. 4-8, ¶ 8-13]. The rejection of claims 2 and 6 pursuant to 35 U.S.C. § 103(a) as allegedly being unpatentable over Noriyuki in view of U.S. Patent No. 7,030,911 B1 to Kubo (“Kubo”) was similarly maintained. [10/14/08 Office Action, p. 9-11, ¶ 14-17]. Claim 3 was rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Noriyuki in view of U.S. Patent No. 6,654,062 B1 to Numata, et al. (“Numata”). [10/14/08 Office Action, p. 11. ¶ 18-19].

By this paper, claims 1-7 are amended. Claim 1 is amended to recite, *inter alia*, a “determination device which determines whether or not to correct the exposure error in accordance with whether or not said image sensing apparatus satisfies a predetermined condition when said image sensing apparatus is in an auto exposure control mode.” A similar and conforming amendment is made to claim 7 which is a method claim analogous to the apparatus of claim 1. Claims 2-6 are amended to correct for antecedent basis and to conform to the changes to claim 1. Support for the amendments to claims 1-7 may be found throughout the application as originally filed including, for example, Fig. 5 along with accompanying descriptive text in p. 19, ln. 27 to p. 24, ln. 7.

No new matter will be introduced into this application by entry of these amendments. Entry is respectfully requested. After entry of these amendments claims 1-7 and 9 are pending.

B. Claims 1, 4-5, 7, and 9 are Not Anticipated by Noriyuki

Applicant respectfully traverses the 35 U.S.C. § 102(b) rejection of claims 1, 4-5, 7, and 9. As set forth in detail below, Noriyuki does not teach, disclose, or suggest each and every element of these claims. In particular, Noriyuki fails to disclose a determination device which determines whether to correct the exposure error on the basis of whether the image sensing apparatus satisfies a predetermined condition while in auto exposure mode. In view of the following remarks, Applicant kindly requests the Examiner kindly reconsider and withdraw the anticipation rejection.

In response to Applicant's July 16, 2008 reply, the Office Action contends that the determination device as recited in claim 1 "does not preclude the possibility of the "setting state" or the "operation state" corresponding to an "auto exposure mode"." The Office Action further contends that "the language in actuality may be interpreted as a determination device which determines whether or not to correct the exposure error on the basis of an auto exposure mode." [10/14/08 Office Action, p. 3, ¶ 4]. Applicant respectfully asserts, however, that claim 1 is to be interpreted in light of the specification. As an example, Fig. 5 illustrates a flowchart providing a plurality of setting states which may be set. Since the state of being in an automatic exposure mode is not provided as a "setting state" or an "operation state" in Fig. 5 or elsewhere in the specification, Applicant respectfully asserts that this aspect of claim 1 cannot be equated with correcting the exposure error on the basis of whether the image sensing apparatus is in the automatic exposure mode. As such, Noriyuki does not teach or disclose Applicant's determination device.

Notwithstanding whether Noriyuki discloses correcting the exposure error on the basis of a setting state or an operation state, Applicant has amended claim 1 for further clarity such that it

now recites, *inter alia*, determining “whether or not to correct the exposure error in accordance with whether or not said image sensing apparatus satisfies a predetermined condition when ... in an auto exposure control mode.” Such a predetermined condition is defined in, for example, Fig. 5 and accompanying descriptive text. Specific portions of the text which define a “predetermined condition” include p. 19, ln. 26 to p. 20, ln. 2 which recites:

... whether to correct the exposure error of the sensed image is determined. This determination condition will be explained with reference to the flow chart of Fig. 5. [Applicant, p. 19, ln. 26 to p. 20, ln. 2].

From among the criteria shown in Fig. 5 as well as elsewhere throughout the specification, an automatic exposure mode is not provided as a determination condition. Furthermore, independent of the definitions provided in the specification, Applicant respectfully asserts that whether an imaging apparatus is in an automatic exposure mode is not itself a predetermined condition which may or may not be satisfied.

Applicant’s image sensing apparatus initially calculates the exposure error between that of a sensed image and the correct exposure level. While in the automatic exposure control mode, whether or not to correct the exposure error is determined based on whether a predetermined condition is satisfied. The exposure error is then corrected on the basis of this determination result. Under these conditions, while in the auto exposure control mode there may be instances in which the exposure error is not corrected even though an exposure error has been calculated. This is because there are some cases where an appropriate result cannot be obtained via correction with the calculated exposure error. On the other hand, when Noriyuki’s image sensing apparatus is in the auto exposure control mode, correction of the exposure error is always performed. Since Noriyuki does not disclose determining “whether or not to correct the exposure error in accordance with whether or not said image sensing apparatus satisfies a

predetermined condition” Applicant respectfully asserts that claim 1 is not anticipated by Noriyuki.

Accordingly, Noriyuki fails to teach, disclose, or suggest a “determination device which determines whether or not to correct the exposure error in accordance with whether or not said image sensing apparatus satisfies a predetermined condition when said image sensing apparatus is in an auto exposure control mode” as recited in Applicant’s amended claim 1. Applicant submits claim 1 is patentably distinct from Noriyuki for at least this reason. Claim 1 is directed to an image sensing apparatus whereas independent claim 7 discloses an image sensing method analogous to claim 1. As such, claim 7 is also asserted to be patentably distinct for at least similar reasons. Since claims 4-5 and 9 depend either directly or indirectly from independent claims 1 and 7, respectively, they are all allowable for at least the same additional independent reasons as set forth for claim 1. Consequently, the Section 102(b) rejection of claims 1, 4-5, 7, and 9 should be withdrawn.

C. Claims 2-3 and 6 are Patentable over Noriyuki in view of Kubo or Numata

Applicant respectfully traverses the rejection of claims 2-3 and 6 under 35 U.S.C. § 103(a) as allegedly being unpatentable for obviousness over Noriyuki in view of Kubo or Numata. For at least similar reasons as stated above and for the secondary references failing to overcome the deficiencies of the primary reference, claims 2-3 and 6 are also asserted to be patentably distinct. Accordingly, Applicant kindly requests that the Section 103 rejection of claims 2-3 and 6 over Noriyuki in view of Kubo or Numata be withdrawn.

Although claims 2-3 and 6 are patentable over Noriyuki in view of Kubo or Numata by way of their dependency on claim 1, Applicant respectfully asserts that these claims contain additional, independent elements which are patentable over the cited references. For example, in

rejecting claim 2, the Office Action recognizes that Noriyuki “does not explicitly teach the apparatus according to claim 1, wherein the setting state of the image sensing apparatus includes at least one of a state in which an exposure correction value is set, … an exposure condition obtained by photometry is held, … a photometry method is set to spot photometry, … a manual exposure mode is set, and … a long shutter mode is set, and when any one of the states is set, said exposure correction calculation device does not correct the exposure error.” [10/14/08 Office Action, p. 9, ¶ 16]. In attempting to overcome this deficiency the Office Action refers to Kubo which is directed to a “digital camera in which a relative positional displacement (blur) between the subject and the camera can be minimized by automatically setting appropriate exposure conditions according to the movement of the subject.” [Kubota, col. 1, lns. 40-45].

In one embodiment, Kubota discloses a flowchart (see, e.g., Fig. 6 and corresponding descriptive text in cols. 7-8) describing operation of a digital camera. The Office Action contends that col. 7, lns. 48-56 of Kubo corresponds to Applicant’s “state in which a long shutter mode is set” as recited in pending claim 2. The cited portion of Kubo recites:

Then, whether the S2 switch (release switch) is on or not is determined (step #23). When the S2 switch is not on, whether the S1 switch continues being on for a predetermined time or not is determined (step #25). When the S1 switch continues being on within the predetermined time, the current state is maintained. When the S1 switch continues being on for not less than the predetermined time, it is determined that the user has no intention to perform shooting, and the process returns to step #5. [Kubo, col. 7, lns. 48-56].

Here, Kubo is not determining whether to perform exposure correction on the basis of how long the switch S1 has been depressed. Rather, in this instance (in steps #23 and #25) the flowchart in Fig. 6 is determining whether to maintain a “current state” on the basis of whether switch S2 has

been pressed and whether switch S1 is being depressed for a period longer than a predetermined time.

The “current state” is a preview image which is displayed on the monitor after S1 is depressed in step #17 and the imaging conditions are locked in as shown by steps #19 and #21. In step #23 it is determined whether switch S2 is pressed. If yes, an actual image is taken in step #27. If S2 is not pressed, flow proceeds to step #25 where it is determined whether a predetermined time has elapsed. If the time is less than this predetermined time limit, the “current state” is maintained. However, if S1 continues to be depressed beyond the predetermined time limit then flow proceeds to step #5. The Office Action contends that “when [Kubo’s] operation state is returned back to #5, the exposure control value #27 will not be carried out in use.” [10/14/08 Office Action, p. 10, ¶ 6]. However, as explained in col. 7, lns. 56-63 of Kubo, in step #27 the actual photographed imaged is acquired. Thus, according to the flowchart in Fig. 6, a photographed image is obtained when switch S2 is pressed. If S2 is not pressed and S1 remains depressed, the “current state” of the imaging apparatus is maintained for a predetermined time limit.

From among the sequence of steps provided in Fig. 6, there is no indication that the exposure error may not be corrected. In fact, as indicated by steps #13 and #31, “SIGNAL PROCESSING” is performed every time an image is acquired. That is, Kubo always corrects an acquired image. Consequently the process wherein an image is not acquired if S2 is not pressed cannot be equated with the process of not correcting the exposure error. In order for a determination of whether to correct the exposure error to be made, an image must first be acquired. A review of Kubo indicates that Kubo does not appear to disclose instances where the

exposure error is not corrected when the image sensing apparatus is in at least one of the states recited in Applicant's amended claim 2 is set.

In rejecting claim 6, the Office Action again refers to Fig. 6 of Kubo and presents arguments analogous to those used in rejecting claim 2. However, Applicant respectfully asserts that the logic presented above with regards to claim 2 also applies to the rejection of claim 6. Applicant therefore respectfully asserts that Noriyuki and Kubo – whether alone or in combination - fail to teach, disclose, or suggest that “when said image sensing apparatus is in at least one of a state in which an exposure correction value is set, a state in which an exposure condition obtained by photometry is held, a state in which a photometry method is set to spot photometry, and a state in which a long shutter mode is set, said determination device determines not to correct the exposure error” as recited in amended claim 2. Applicant therefore respectfully submits that claim 2 is patentable over Noriyuki and Kubo for at least this reason. Applicant respectfully submits that all of the pending claims are now allowable for the above reasons and early, favorable action in that regard is requested.

Applicant has chosen in the interest of expediting prosecution of this patent application to distinguish the cited documents from the pending claims as set forth above. These statements should not be regarded in any way as admissions that the cited documents are, in fact, prior art. Finally, Applicant has not specifically addressed the rejections of the dependent claims. Applicant respectfully submits that the independent claims from which they depend are in condition for allowance as set forth above. Accordingly, the dependent claims are also in condition for allowance. Applicant, however, reserves the right to address such rejections of the dependent claims in the future as appropriate.

CONCLUSION

For the above-stated reasons, this application is respectfully asserted to be in condition for allowance. An early and favorable examination on the merits is earnestly solicited. In the event that a telephone conference would facilitate the examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY ADDITIONAL FEES WHICH MAY BE REQUIRED FOR THE TIMELY CONSIDERATION OF THIS AMENDMENT UNDER 37 C.F.R. §§ 1.16 AND 1.17, OR CREDIT ANY OVERPAYMENT TO DEPOSIT ACCOUNT NO. 13-4500, ORDER NO. 1232-5172.

Respectfully submitted,
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